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November 13, 1995

NOV 13 1995

William F. Caton, Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

NEW YORK OFFICE
575 MADISON AVENUE
NEW YORK, NY 10022-2585

NEW JERSEY OFFICE
ONE GATEWAY CENTER
NEWARK, NJ 07102-5397

HOWARD J. BRAUN

Re: MM Docket No. 94-155
FM Table of Allotments
Big Pine Key, Key Colony Beach,
Naples, and Tice, Florida

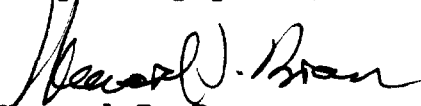
DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Enclosed herewith for filing, on behalf of our client, Palm Beach Radio Broadcasting, Inc., are an original and four (4) copies of its "COMMENT ON WITHDRAWAL OF CONSENT OF KEY CHAIN, INC." in the above-referenced proceeding.

Please direct all inquiries and communications concerning this matter to the undersigned.

Very truly yours,


Howard J. Braun
Jerold L. Jacobs

Enc.

cc: As on Certificate of Service (all w/enc.)

No. of Copies rec'd 044
List ABCDE

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

NOV 13 1995

FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 94-155
Table of Allotments,)
FM Broadcast Stations) RM-8486
(Big Pine Key, Key Colony Beach,)
Naples, and Tice, Florida)

DOCKET FILE COPY ORIGINAL

To: Chief, Allocations Branch

COMMENT ON WITHDRAWAL OF CONSENT OF KEY CHAIN, INC.

PALM BEACH RADIO BROADCASTING, INC. ("Palm Beach"), licensee of Station WPBZ(FM), Indiantown, Florida, by its attorneys, hereby comments on the September 15, 1995 "Withdrawal of Consent of Key Chain, Inc." ("Withdrawal") filed by Key Chain, Inc. ("Key Chain"), licensee of Station WKRY(FM), Key West, Florida. As Palm Beach will now demonstrate, Key Chain's Withdrawal has absolutely no impact on the technical viability of the two alternative counterproposals contained in the February 17, 1995 "Joint Comments and Counterproposal" ("Joint Comments") filed by Amaturio Group, Ltd., WSUV, Inc., GGG Broadcasting, Inc., and Glades Media Company (together, Joint Petitioners) in this proceeding, or on the "Joint Resolution" filed by the Joint Petitioners in their March 6, 1995 "Joint Reply Comments" herein. Therefore, Key Chain's pleading should be accorded no decisional significance in this proceeding.

1. In the Joint Comments (at ¶¶'s 6, 12, and n.7) and the Joint Reply Comments (at ¶12), the Joint Petitioners stated that substituting Channel 281C for Channel 284C at Big Pine Key, Florida, and modifying the license of Station WWUS(FM) accordingly would require a

change in the transmitter site of Station WKRY(FM), Key West, Florida "to eliminate potential IF interference". The Joint Petitioners indicated that Key Chain had consented to change its transmitter site to eliminate the shortspacing, and they appended Key Chain's February 17, 1995 consent letter. Key Chain's Withdrawal (at 2) notifies the Commission that it has changed its mind and no longer consents to change its transmitter site.

2. At the time that the Joint Petitioners sought Key Chain's consent to change transmitter sites, it appeared that Station WWUS(FM) would have to be treated as a full Class C station in this proceeding. (By Letter Order dated January 11, 1995, the Chief, Audio Services Division had dismissed Station WWUS(FM)'s petition for reconsideration and affirmed the dismissal of WWUS's pending application (File No. BPH-870302MQ) to retain full Class C facilities on Channel 284 -- which had the effect of automatically reclassifying WWUS(FM) from Channel 284C to Channel 284C1 -- but WWUS(FM) was still challenging that reclassification. Such full Class C status would create the above-described shortspacing problem with Key Chain.) However, by pleadings filed on October 19, 1995 (attached hereto as Exhibits A and B), Crain Communications, Inc. ("Crain"), licensee of Station WWUS(FM), requested the Commission to dismiss its Motions concerning the Bureau's Letter Order. The Bureau granted Crain's request by letter dated October 27, 1991 (Exhibit C). These actions have the effect of automatically downgrading WWUS(FM) to Channel 284C1.

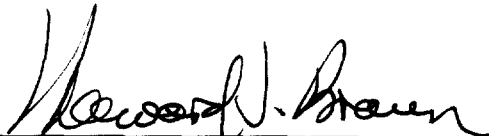
3. Under the above circumstances, it unnecessary for the Joint Petitioners to propose substituting Channel 281C for WWUS's previous Channel 284C in this proceeding. Rather, the Joint Petitioners may properly propose that Channel 281C1 for substituted for Channel 284C1

at Big Pine Key. As the FM spacing studies already submitted in this proceeding indicate, moving Station WWUS to Channel 281C₁ (as opposed to Channel 281C) does not require Station WKRY(FM) to change transmitter sites to avoid shortspacing. Hence, since it is no longer necessary to change Key Chain's site, Key Chain's withdrawal of consent to such a change has no decisional significance in this proceeding.

WHEREFORE, in light of the foregoing, Palm Beach respectfully requests that Key Chain's Withdrawal be duly noted in this proceeding, but that the Withdrawal be given no decisional significance herein, because Key Chain's consent to change transmitter sites is no longer necessary to make the Joint Petitioners' counterproposals and Joint Resolution consistent with the Commission's technical rules.

Respectfully submitted,

PALMBEACH RADIO BROADCASTING, INC.

By 

Howard J. Braun
Jerold L. Jacobs

ROSENMAN & COLIN LLP
1300 - 19th Street, N.W. Suite 200
Washington, D.C. 20036
(202) 463-4640

Its Attorneys

Dated: November 13, 1995

Before The
Federal Communications Commission
 Washington, D.C. 20554

In re Application Of)	
)	
Crain Broadcasting, Inc.)	File No. BPH-870302MQ
Station WWUS(FM))	
Big Pine Key, Florida)	
)	
For Construction Permit)	
)	
TO: The Commission)	

607.19 / 1995

MOTION TO DISMISS MOTION TO VACATE

On February 21, 1995, Crain Broadcasting, Inc. ("Crain"), licensee of Station WWUS(FM), Big Pine Key, Florida, by its attorneys filed a Motion to Vacate the Letter Order of the Chief, Audio Services Division dated January 11, 1995 dismissing a Petition for Reconsideration and affirming the denial of the above-captioned application ("Letter Order"). For the reasons set forth below, Crain hereby requests the Commission to dismiss the Motion to Vacate. In support of this Motion to Dismiss, the following is respectfully submitted¹.

DISCUSSION

1. Crain's Petition for Reconsideration of the Denial of Review ("Petition") was dismissed by the Chief, Audio Services Division for the reasons set forth in the Letter Order. The subject Motion to Vacate was filed on the basis of perceived fundamental procedural and substantive errors.

¹ A Motion to Dismiss a companion Motion for Stay is being filed concurrently with this pleading.

2. The Motion to Vacate was filed in furtherance of Crain's efforts to retain full Class C status for its Station WWUS (FM), Big Pine Key, Florida which, under current rules, would otherwise require the automatic reclassification of Station WWUS to Class C1.

3. Crain has determined to cease its efforts to retain full Class C status for Station WWUS and to accept the automatic downgrade of WWUS to Class C1². As a consequence, continuing to prosecute this Motion will serve no useful purpose. Therefore, Crain hereby requests that the subject Motion to Vacate be dismissed.

CONCLUSION

Since Crain no longer desires to pursue its efforts to retain full Class C status for Station WWUS, dismissal of its Motion to Vacate should be granted.

Respectfully submitted,

CRAIN BROADCASTING, INC.

Haley Bader & Potts P.L.C.
4350 North Fairfax Drive
Suite 900
Arlington, VA 22203-1633
703/841-0606

October 19, 1995

By: 

Richard M. Riehl
Its Attorney

² No change in facilities is required.

Before The
Federal Communications Commission
 Washington, D.C. 20554

In re Application Of)	
)	
Crain Broadcasting, Inc.)	File No. BPH-870302MQ
Station WWUS(FM))	
Big Pine Key, Florida)	
)	
For Construction Permit)	
TO: The Commission		

OCT 19 1995

MOTION TO DISMISS MOTION FOR STAY

Crain Broadcasting, Inc. ("Crain"), licensee of Station WWUS(FM), Big Pine Key, Florida, by its attorneys and pursuant to Sections 1.43 and 1.44 of the Rules, hereby requests the Commission to dismiss Crain's pending Motion For Stay, filed on February 21, 1995, of the action contained in the Letter Order of the Chief, Audio Services Division dated January 11, 1995 dismissing Crain's Petition for Reconsideration and affirming the dismissal of the above-captioned application ("Letter Order").

In support thereof, the following is shown.¹

DISCUSSION

1. Crain's Petition for Reconsideration of the Denial of Review ("Petition") was dismissed by the Chief, Audio Services Division for the reasons set forth in the Letter Order. The subject Motion for Stay was

¹ A Motion to Dismiss a companion Motion to Vacate is being filed concurrently with this pleading.

filed to preserve the *status quo* while the Commission considered Crain's concurrently filed Motion to Vacate.

2. The subject Motions were filed in furtherance of Crain's efforts to retain full Class C status for its Station WWUS (FM), Big Pine Key, Florida which, under current rules, would otherwise require the automatic reclassification of Station WWUS to Class C1.

3. Crain has determined to cease its efforts to retain full Class C status for Station WWUS. As a consequence, continuing to prosecute this Motion will serve no useful purpose. Therefore, Crain hereby requests that the subject Motion for Stay be dismissed.

CONCLUSION

Since dismissal of Crain's Motion to Vacate will, in effect, moot the basis for the requested stay, this request for dismissal of the Motion For Stay should be granted.

Respectfully submitted,

CRAIN BROADCASTING, INC.

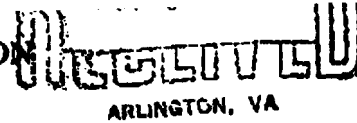
Haley Bader & Potts P.L.C.
4350 North Fairfax Drive
Suite 900
Arlington, VA 22203-1633
703/841-0606

October 19, 1995

By: 

Richard M. Riehl
Its Attorney

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554



ARLINGTON, VA

IN REPLY REFER TO:
1800B2-RHW

October 27, 1995

Richard M. Riehl, Esquire
Haley, Bader & Potts
Suite 900
4350 North Fairfax Drive
Arlington, VA 22203-1633

In re: Station WWUS(FM), Big Pine Key, FL
File No. BPH-870302MQ

Dear Mr. Riehl:

This is in reference to the February 21, 1995, Motion to Vacate and Motion for Stay you filed on behalf of Crain Broadcasting, Inc., licensee of Station WWUS(FM), Big Pine Key, Florida, with respect to the Letter from Larry D. Eads, Chief, Audio Services Division, to you dated January 11, 1995, dismissing Crain's Petition for Reconsideration of the denial of Crain's above-referenced application for modification of the facilities of Station WWUS(FM). On October 19, 1995, you filed, on behalf of Crain, a Motion to Dismiss Motion to Vacate and a Motion to Dismiss Motion for Stay. At the applicant's request, we hereby DISMISS Crain's Motion to Vacate and Crain's Motion for Stay.

Sincerely,

A handwritten signature in black ink, appearing to read 'Linda Blair'.

Linda Blair, Acting Chief
Audio Services Division
Mass Media Bureau

CERTIFICATE OF SERVICE

I, Yvonne Corbett, a secretary in the law offices of Rosenman & Colin LLP, do hereby certify that on this 13th day of November, 1995, I have caused to be mailed, or hand-delivered, a copy of the foregoing "**COMMENT ON WITHDRAWAL OF CONSENT OF KEY CHAIN, INC.**" to the following:

John A. Karousos, Chief*
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Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W., Room 554
Washington, D.C. 20554

Ms. Kathleen Scheuerle*
Allocations Branch
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**Counsel for Spanish Broadcasting
System of Florida, Inc. (WZMQ)**

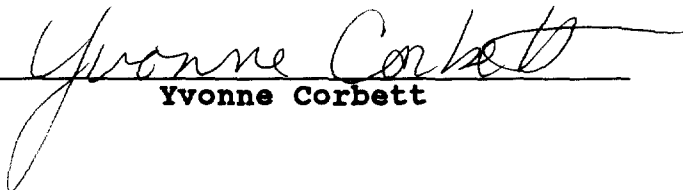
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Glades Media Company (WAFC)

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Counsel for Gulf Communications (WAAD)


Yvonne Corbett

***BY HAND**